

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:)
)
Daniel Miller, d/b/a Danielson Grain,)
d/b/a Danielson Trucking,)
)
Debtor.)

Case No. 04-60106
Chapter 11

Daniel S. Miller,

Plaintiff,

vs.

Adversary Case No. 04-6043

**ANSWER AND COUNTER
CLAIM OF CHUCK BINA**

Daniel Altepeter, Darral Altepeter, John Altepeter, Peter Anderson, Roger Anderson, Doug Barth, Chuck Bina, Bremer Bank National Association, Monte Casavan, Gregory Driscoll, Dubuque Farming Association, Emmert Farms, Farmers Coop Grain & Seed, Kyle Haake, Roger Hagen, Russ Halverson, Gary Hoper, J&J Gust Farms, J.O. Thorson Farms, Inc., JETN Farms, LLP, Gorman Johnson, Loren Johnson, Walter Johnson, Dan Juneau, Joe Jeneau, Charles Kaml, Key West Farms, KO-R Farms, Inc., K-Team, Gary Larson, Lonesome Land, Matco, Inc., David McCollum, McWalter Farms, Inc., James A. Narum, Bradley Nelson, Doyle Nelson, Jeremy J. Nelson, Patrick Noll, Erik Nymann, Nymann Farms, Ose Farms a/k/a Joseph T. Ose, Burl Peckman, Gary Peckman, Pederson Brothers, Peterson Farms, PM Farming, Inc., Hans Reinhardt, Darrold Rodahl, Larry Roisland, Gary Salentiny, Dennis Salentiny, Richard Salentiny, Andrew Spaeth, John Spina, Howard Steinmetz, Matt Thorson, Ronald Thorson, Tri-mack Potato, Inc., United Grain & Livestock, Erwin Vanek, Dan Wichterman, Steve D. Wollin and Gregory Wollin.

Defendants.

Chuck Bina, by and through his undersigned attorney, as and for its answer to the amended complaint of the Plaintiff states and alleges as follows:

1. The answering Defendant denies each and every allegation statement or assertion contained in said amended complaint unless expressly admitted, qualified or otherwise explained.

2. The answering Defendant admits the allegations contained in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 25, 32, and 39.

3. The answering Defendant is without a basis to form a belief as to the truth or veracity of the allegation contained in paragraphs 2, 10, 11, 12, 13, 15, 17, 18, 22, 23, 24, 30, 31, 33 through 38, 40 through 116, and 125 through 138.

4. The answering Defendant specifically denies the allegations contained in paragraphs 118 through 124.

5. The answering defendant alleges that in November and December of 2003, Debtor was a grain buyer as that term is used in North Dakota Century Code Chapter 60-02.1.

6. The answering defendant alleges that any contracts or agreements alleged in the complaint between this defendant and the debtor are void as in violation of North Dakota Century Code Chapter 60-02.1 and specifically Section 60-02.1-14.

7. This answering defendant alleges that in December 2003 and thereafter, Debtor was insolvent according to NDCC section 60-02.1-28.

8. This answering defendant alleges that a trust fund must be established for this defendant's benefit pursuant to NDCC section 60-02.1-30.

9. This answering defendant alleges that Debtor converted the soybeans, wheat and barley described in paragraph 39 of the Amended Complaint for Debtor's own use.

10. This answering defendant alleges that the soybeans, wheat and barley described in paragraph 39 of the Amended Complaint was comingled and converted in violation of and subject to the relief described in NDCC section 32-25-01.
11. This answering defendant alleges that he stored grain with the Plaintiff notwithstanding the fact that the Plaintiff claims it did not possess a bond to store grain through the State of North Dakota. The Plaintiff would grant the Defendant and other similarly situated farmers 60 days of free storage and charge \$.02 per bushel per month thereafter. The Plaintiff would never receive rent storage payments directly. Instead, Plaintiff would deduct any storage charges from the price paid for the grain in storage.
12. The answering Defendant specifically alleges that he is the owner of 2751.07 bushels of soybeans, 1740.22 bushels of wheat and 982.84 bushels of barley as referenced in paragraph 39 of the Amended Complaint.
13. The answering Defendant further alleges that he had a bailment arrangement with the Plaintiff as a result of the grain that Plaintiff received from this defendant.
14. The answering Defendant specifically denies that the Plaintiff had any ownership interest whatsoever in the soybeans, wheat and barley bushels referred to above in paragraph 39 of the Amended Complaint.

COUNTER CLAIM

For his counterclaim against Plaintiff, Chuck Bina restates the allegations in paragraphs 1 through 14 above, inclusive together with the following.

1. Chuck Bina alleges that Debtor violated NDCC chapter 60-02.1 and specifically NDCC section 60-02.1-14.
2. Chuck Bina alleges that Plaintiff was insolvent on or about December 1, 2003 and

thereafter according to NDCC section 60-02.1-28.

3. Chuck Bina is entitled to the relief described in chapter 60-02.1 of the NDCC including the establishment of a trust fund for his benefit pursuant NDCC section 60-02.1-30.
4. Chuck Bina alleges that the grain described in paragraph 39 of the Amended Complaint was converted by Plaintiff for his own use in violation of NDCC chapter 32-25.
5. Chuck Bina alleges he is entitled to the relief provided in NDCC chapter 32-25.

WHEREFORE, the Defendant, Chuck Bina, prays for an Order of the Court as follows:

1. Dismissing the Plaintiff's amended complaint with prejudice.
2. Determining that Defendant Chuck Bina is the owner of 2,751.07 bushels of soybeans, 1,740.22 bushels of wheat and 982.84 bushels of barley as referenced in paragraph 39 of the Amended Complaint.
3. Determining that Defendant, Chuck Bina entered into a bailment relationship with the Plaintiff relating to its bushels of soybeans, wheat and barley referred to above.
4. Determining that title to the bushels of soybeans, wheat and barley referred to above never passed to the Plaintiff as a result of the bailment relationship existing between the Plaintiff and Defendant Chuck Bina and/or that any transfer of title is void.
5. Establishing a trust fund for payment for the grains described above.
6. Awarding Chuck Bina the value of the grains in accordance with North Dakota Century Code chapter 32-25 and/or 60-02.1.

7. Granting to Chuck Bina reasonable attorneys fees, cost, and disbursements, and other expenses associated with defending this matter.

8. Granting to Chuck Bina such other further relief as to the Court deems just and equitable.

Dated this 23 day of July, 2004.

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